

Federal Acquisition Regulation

22.1203-5

or would not be appropriate. The waiver must be reflected in a written analysis as described in 29 CFR 9.4(d)(4)(i) and must be completed by the contract solicitation date, or the waiver is inoperative. The senior procurement executive shall not redelegate this waiver authority.

(b)(1) When an agency exercises its waiver authority with respect to any contract, subcontract, or purchase order, the contracting officer shall direct the contractor to notify affected workers and their collective bargaining representative in writing, no later than five business days after the solicitation issuance date, of the agency's determination. The notice shall include facts supporting the determination. The contracting officer's failure to direct that the contractor provide the notice as provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222-17 in the solicitation.

(2) Where a contracting agency waives application to a class of contracts, subcontracts, or purchase orders, the contracting officer shall, with respect to each individual solicitation, direct the contractor to notify incumbent workers and their collective bargaining representatives in writing, no later than five business days after each solicitation issuance date, of the agency's determination. The notice shall include facts supporting the determination. The contracting officer's failure to direct that the contractor provide the notice provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222-17 in the solicitation.

(3) In addition, the agency shall notify the Department of Labor of its waiver decision and provide the Department of Labor with a copy of its written analysis no later than five business days after the solicitation issuance date (see 29 CFR 9.4(d)(2)). Failure to comply with this notification requirement shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222-17 in the solicitation. The waiver decision and related written analysis shall be sent to the following

address: U.S. Department of Labor, Wage and Hour Division, Branch of Government Contracts Enforcement, 200 Constitution Avenue, Room S-3006, Washington, DC 20210, or email to: *Displaced@dol.gov*.

22.1203-4 Method of job offer.

A job offer made by a successor contractor must be a bona fide express offer of employment on the contract. Each bona fide express offer made to a qualified service employee on the predecessor contract must have a stated time limit of not less than 10 days for an employee response. Prior to the expiration of the 10-day period, the contractor is prohibited from offering employment on the contract to any other person, subject to the exceptions at 22.1203-5. Any question concerning an employee's qualifications shall be decided based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and a contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with the Executive Order. An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12(b) for regulatory provisions addressing circumstances in which a bona fide offer of employment can occur.)

22.1203-5 Exceptions.

(a) A successor contractor or its subcontractors are not required to offer employment to any service employee of the predecessor contractor who—

(1) Will be retained by the predecessor contractor.

(2) The successor contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job. (See 29 CFR 9.12(c)(4) for regulatory provisions addressing circumstances in which this